



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 1, 1996

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR96-0467

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39144.

The Texas Department of Criminal Justice (the "department") received an open records request from an AFSCME representative for

the Policy and Procedure/Employee Rules and Regulations and staffing requirements for Memorial Hospital. I would also like any security audits done since 1990.

You explain that the department does not maintain any written staffing requirements for security operations at Memorial Hospital and that actual staffing is a function of the number of inmates being served at the hospital at any given moment and the specific security needs of individual inmates. Based on your representation that the department has no responsive documents with regard to the hospital staffing requirements, we conclude that the department need not respond to this aspect of the request. *See* Open Records Decision No. 445 (1986) (Open Records Act does not require governmental body to obtain information not in its possession or to prepare new information in response to open records request).

You contend that the department may withhold the remaining requested information from the public¹ pursuant to section 552.108 of the Government Code. Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133 (1976), 127 (1976). We have reviewed the policy and procedure manuals and the security audits you have submitted to this office and agree that the release of these materials to the general public could pose a threat to the department's security operations within the hospital.² We therefore conclude that the department may withhold these documents in their entirety pursuant to section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹It is not clear to this office whether the AFSCME representative is requesting this information on behalf of a department employee. We therefore do not address whether the requestor would have a special right of access to this information when acting as the agent for one or more department employees.

²In reaching our conclusion here, we assume that the "representative sample" of security audits submitted to this office is truly representative of any other existing audits. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other audits to the extent that those audits contain substantially different types of information than that submitted to this office.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 39144

Enclosures: Submitted documents

cc: Mr. Brian E. Olsen
International Field Coordinator
North Eastern Region
AFSCME
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Palestine, Texas 75801
(w/o enclosures)